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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/051,998	01/17/2002	Nicholas J. Elsey	41698-1036	9128
7590	06/09/2004		EXAMINER	
Alex L. Yip Kaye Scholer LLP 425 Park Avenue New York, NY 10022			CHOULES, JACK M	
			ART UNIT	PAPER NUMBER
			2177	
			DATE MAILED: 06/09/2004	
			5	

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/051,998	ELSEY ET AL.
	Examiner Jack M Choules	Art Unit 2177

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 17 January 2002 and 28 March 2002.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-92 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) \_\_\_\_\_ is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) 1-92 are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 28 March 2002 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                    | Paper No(s)/Mail Date. _____.   |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____.                                   |

## **DETAILED ACTION**

1. Claims 1-92 are presented for examination.

### ***Election/Restrictions***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-28 and 51-74, drawn to remote data collection using data found in the processing of the communication in a response, classified in class 707, subclass 10.
  - II. Claim 29-39 and 75-84, drawn to evaluation of performance, classified in class 702, subclass 182.
  - III. Claim 40-50 and 85-92, drawn to augmenting a query, classified in class 707, subclass 5.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions I, II and III are related as subcombinations disclosed as usable together in a single combination or at least inventions which could be used in the same environment note some of the dependent claims are related to the environment. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention I has separate utility such as the requesting of information through a distant source using part of the data from processing of the communication in answering the request, it does not need the performance monitoring detailed in Group II or the query expansion detailed in Group III.

Likewise the performance monitoring of Group II has separate utility from the specific information response based on communication data for response to user request or the Term addition of Group III. Similarly, invention III has separate utility such as The specific term expansion of claim III, has utility in a general search system not requiring the key elements of Group I and II. See MPEP § 806.05(d).

3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

A telephone call was made to Alex L. Yip on 4 June 2004 to request an oral election to the above restriction requirement, but did not result in an election being made as the applicant needed more time to decide which group of claims to elect.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

4. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

***Conclusion***

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. This art is felt to be relevant to the case, found during quick search to help with restriction decision is enclosed to give the applicant an idea of what I found so far. Further searching may turn up more relevant art

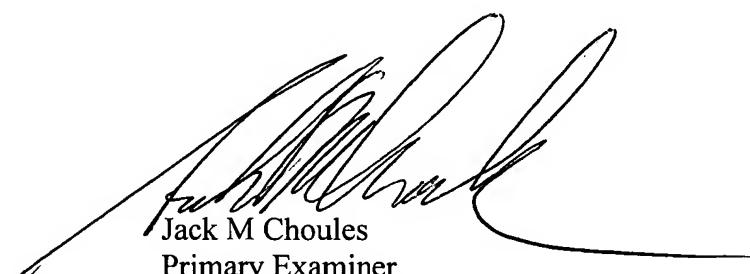
Gupta	US 6,122,361 A	Thought to relate to group I.
Lee Jr. et al.	US 6,640,143 B1	Thought to relate to group II.
Cullis	US 6,539,377 B1	Thought to relate to group III.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jack M Choules whose telephone number is (703) 305-9840. The examiner can normally be reached on M-F (7:30-4:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John E. Breene can be reached on (703) 305-9790. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jack M Choules  
Primary Examiner  
Art Unit 2177

4 June 2004